IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO.197 OF 2005

Mr. Ulhas Vasudev Malgaonkar,
presently in Judicial Custody,
Mapusa Police Station. ... Applicant

versus

State through A.N.C. and
another. ... Respondents

Mr. Marvin D'Souza, Advocate for the Applicant.

Mr. S. N. Sardessai, Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 6TH OCTOBER, 2005.

P.C.:-

Heard Mr. Marvin D'Souza, the learned Counsel appearing on behalf of the applicant and Mr. S. N. Sardessai, the learned Public Prosecutor appearing on behalf of the Respondent.

The applicant is being prosecuted in Special C.C.No.27/2004 under Section 20(b)(ii)(C) of the N.D.P.S. Act, 1985. The applicant/accused was arrested on 9-10-2004 and

since then he is in custody. An application for bail having been filed by him before the N.D.P.S. Court, Mapusa, the same was rejected by the learned Special Judge by her Order dated 2-2-2005. Hence, the accused is now before this Court seeking bail.

There is no dispute that the quantity of charas which the accused was allegedly found with was 951 gms. minus the wrappers and on this aspect, the learned Special Judge has observed, and in my view rightly, that the prohibition of Section 37(1)(b) of the Act would not come in the way of the said accused in obtaining bail. However, the learned Special Judge felt that the said quantity was so large that it almost neared the commercial quantity for which the punishment prescribed is rigorous imprisonment upto 10 years and fine upto Rs.1,00,000/-. The learned Special Judge also felt that the likelihood of the accused jumping bail could not be ruled out as a remote possibility and, therefore, chose not to exercise discretion in favour of the said accused.

Once, it is accepted that the quantity found with the

accused is 951 gms., the accused could be charged only under Section 20(b)(ii)(B) of the Act for which the punishment prescribed is rigorous imprisonment which may extend to 10 years and fine which may extend to One Lakh of Rupees. Once, it is held that the case of the accused does not come within the prohibition of Section 37(1)(b) of the Act and no other prohibition either in the Act or in the Code of Criminal Procedure, 1973 has been pointed out on behalf of the respondents, the accused would be entitled to be admitted to bail. The accused is admittedly a permanent resident of Village Tivim and there is no other material placed before the Court that the accused if admitted to bail is likely to jump bail and will not be available for trial.

It may be noted that another accused by name Brian Fernandes who was also arrested at the same time and at the same place where the present accused was, and with whom 62 gms. was found, was admitted to bail by the learned Special Judge by Order dated 3-11-2004.

Considering the above, in my view, the applicant/accused deserves to be admitted to bail. He shall be

released on bail upon execution of a bond of Rs.20,000/- with one surety in the like amount to the satisfaction of the learned Special Judge, N.D.P.S., Court, Mapusa.

N. A. BRITTO, J.

RD.